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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

Case No. *2012-102*

STATEMENT OF ISSUES

13 **JESSIE ABRAHAM GARCIA AKA JESUS**
14 **GARCIA**
12844 Maplevue Street #84
15 Lakeside, CA 92040

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about November 12, 2010, the Board of Registered Nursing, Department of
24 Consumer Affairs received an application for a registered nurse license by exam from Jessie
25 Abraham Garcia Aka Jesus Garcia (Respondent). On or about October 20, 2010, Respondent
26 certified under penalty of perjury to the truthfulness of all statements, answers, and
27 representations in the application. The Board denied the application on April 28, 2011.

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1 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
2 an order granting probation is made suspending the imposition of sentence, irrespective of a
3 subsequent order under the provisions of Section 1203.4 of the Penal Code.

4 "...

5 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
6 would be grounds for suspension or revocation of license.

7 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is
8 substantially related to the qualifications, functions, or duties of the business or profession for
9 which application is made.

10 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
11 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
12 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
13 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
14 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
15 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
16 Section 482."

17 7. Section 482 of the Code states:

18 "Each board under the provisions of this code shall develop criteria to evaluate the
19 rehabilitation of a person when:

20 "(a) Considering the denial of a license by the board under Section 480; or

21 "(b) Considering suspension or revocation of a license under Section 490.

22 "Each board shall take into account all competent evidence of rehabilitation furnished by
23 the applicant or licensee."

24 8. Section 2761 of the Code states:

25 "The board may take disciplinary action against a certified or licensed nurse or deny an
26 application for a certificate or license for any of the following:

27 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

28 "...

1 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
2 functions, and duties of a registered nurse, in which event the record of the conviction shall be
3 conclusive evidence thereof."

4 9. Section 2762 of the Code states:

5 "In addition to other acts constituting unprofessional conduct within the meaning of this
6 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
7 chapter to do any of the following:

8 ". . .

9 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
10 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
11 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
12 himself or herself, any other person, or the public or to the extent that such use impairs his or her
13 ability to conduct with safety to the public the practice authorized by his or her license.

14 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
15 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
16 or the possession of, or falsification of a record pertaining to, the substances described in
17 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
18 thereof."

19 REGULATORY PROVISIONS

20 10. California Code of Regulations, title 16, section 1444, states:

21 "A conviction or act shall be considered to be substantially related to the qualifications,
22 functions or duties of a registered nurse if to a substantial degree it evidences the present or
23 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
24 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

25 "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
26 subdivision (d) of Penal Code Section 11160.

27 "(b) Failure to comply with any mandatory reporting requirements.

28 "(c) Theft, dishonesty, fraud, or deceit.

1 “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
2 Penal Code.”

3 11. California Code of Regulations, title 16, section 1445 states:

4 “(a) When considering the denial of a license under Section 480 of the code, the board, in
5 evaluating the rehabilitation of the applicant and his/her present eligibility for a license will
6 consider the following criteria:

7 “(1) The nature and severity of the act(s) or crime(s) under consideration as grounds
8 for denial.

9 “(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
10 consideration as grounds for denial which also could be considered as grounds for denial under
11 Section 480 of the code.

12 “(3) The time that has elapsed since commission of the act(s) or crime(s) referred to
13 in subdivision (1) or (2).

14 “(4) The extent to which the applicant has complied with any terms of parole,
15 probation, restitution, or any other sanctions lawfully imposed against the applicant.

16 “(5) Evidence, if any, of rehabilitation submitted by the applicant. . . .”

17 **FIRST CAUSE FOR DENIAL OF APPLICATION**

18 **(May 13, 2008 Criminal Conviction for DUI on January 18, 2008)**

19 12. Respondent's application is subject to denial under Code section 480, subdivisions
20 (a)(1), and section 2761, subdivision (f), in that he was convicted of an offense that is
21 substantially related to the qualifications, duties, and functions of a registered nurse and which, if
22 done by a licentiate of the business or profession in question, would be grounds for suspension or
23 revocation of her license. The circumstances are as follows:

24 a. On or about May 13, 2008, in criminal proceeding entitled *People of the*
25 *State of California v. Jessie Abraham Garcia Aka Jesus Garcia*, in San Diego County Superior
26 Court, case number M041283, Respondent was convicted on his plea of guilty to violating
27 Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a
28 misdemeanor.

1 b. As a result of the conviction, on or about May 13, 2009, Respondent was
2 sentenced to five years informal probation, a 9 month First Time Offender Program, to attend a
3 MADD class, to 10 days public service, and to pay fines and fees in the amount of \$1,912.00.

4 c. The facts that led to the conviction are that on the evening of January 18, 2008,
5 Respondent took his wife out to celebrate a work promotion. Although he had a designated
6 driver, that person met someone that night and went home with them. Since he and his wife did
7 not have enough cash to pay for a cab ride home, he drove them home. As he entered the road
8 way, he hit a car that was parallel parking. His wife was injured and transported to the hospital.
9 The police arrived on the scene. Respondent smelled of alcohol, had red and watery eyes, his
10 speech was slurred, and he staggered. He admitted to drinking "a few beers." After failing the
11 field sobriety test, Respondent was arrested and transported to jail where a subsequent blood test
12 reflected a blood alcohol level of .21%.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(Unprofessional Conduct - Dangerous Use of Alcohol on January 18, 2008)**

15 13. Respondent's application is subject to denial under Code section 480, subdivisions (a)
16 and (3)(A), and section 2762, subdivision (b), in that on January 18, 2008, Respondent used
17 alcoholic beverages to an extent or in a manner that was dangerous and injurious to himself and
18 the public when he operated a motor vehicle while under the influence of alcohol, as detailed in
19 paragraph 12 above.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Unprofessional Conduct - Conviction of Alcohol-Related Offense)**

22 14. Respondent's application is subject to denial under Code section 480, subdivisions (a)
23 and (3)(A), and section 2762, subdivision (c), in that on May 13, 2008, Respondent was convicted
24 of a criminal offense involving the consumption of alcohol as detailed in paragraph 12, above.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Registered Nursing issue a decision:
28

1 1. Denying the application of Jessie Abraham Garcia Aka Jesus Garcia for a registered
2 nurse license;

3 2. Taking such other and further action as deemed necessary and proper.

4
5 DATED: 8-15-11

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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